



Reprinted
February 25, 2004

ENGROSSED HOUSE BILL No. 1437

DIGEST OF HB 1437 (Updated February 24, 2004 3:52 pm - DI 106)

Citations Affected: IC 11-10; IC 11-12; IC 12-23; IC 35-38; IC 35-40; IC 35-41; IC 35-50; IC 36-2; noncode.

Synopsis: Forensic diversion program. Creates a forensic diversion program to provide community treatment and mental health and addiction services for offenders suffering from mental illness or addictive disorders who have not been charged or convicted of a violent crime. Requires a county having a community corrections advisory board to formulate a forensic diversion plan, and permits a county without a community corrections advisory board to establish a forensic diversion advisory board to operate a forensic diversion program. Offenders eligible for the program who have been charged with a non-violent misdemeanor or D felony that can be reduced to a misdemeanor are required to plead guilty before participating in the program. Persons already convicted of a crime that is not a violent crime or a drug dealing offense may participate in the program as a condition of probation. Specifies that offenders convicted of certain crimes may not participate in the forensic diversion plan. Establishes a forensic diversion study committee. Requires the department of correction to determine the average daily cost of incarceration and the anticipated future costs of incarceration. Requires each county sheriff to provide the department of correction with the average daily cost of incarceration in a county jail. Repeals the existing forensic diversion program.

Effective: July 1, 2004.

Crawford, Turner, Foley

(SENATE SPONSORS — LONG, HOWARD, LANANE)

January 20, 2004, read first time and referred to Committee on Courts and Criminal Code.
January 29, 2004, amended, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.
February 5, 2004, engrossed. Read third time, passed. Yeas 80, nays 16.

SENATE ACTION

February 12, 2004, read first time and referred to Committee on Judiciary.
February 19, 2004, amended, reported favorably — Do Pass.
February 24, 2004, read second time, amended, ordered engrossed.

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EH 1437—LS 6589/DI 107+



Reprinted
February 25, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1437

A BILL FOR AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-13 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]:

4 **Chapter 13. Costs of Incarceration**

5 **Sec. 1. The department shall develop a methodology for**
6 **determining the average daily cost of incarcerating an offender.**

7 **Sec. 2. The department shall determine the average daily cost of**
8 **incarcerating an offender in:**

9 **(1) the department; and**

10 **(2) each county jail.**

11 **Sec. 3. The department shall provide each court with**
12 **jurisdiction over felony and misdemeanor cases with a report**
13 **enumerating the average daily costs of incarcerating an offender.**

14 **Sec. 4. (a) The department shall update the report described in**
15 **section 3 of this chapter twice each calendar year. However, if the**
16 **average daily cost of incarcerating an offender deviates less than**
17 **one percent (1%) from the previous cost determination, the**

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department is not required to update the report.

(b) The department shall update the report described in section 3 of this chapter, if necessary, after receiving the semiannual incarceration cost analysis from each county sheriff under IC 36-2-13-5.

Sec. 5. The department may use the semiannual incarceration cost analysis of a county sheriff under IC 36-2-13-5 as the daily cost of incarcerating an offender in that county jail.

Sec. 6. (a) The department shall annually conduct or contract with a third party to annually conduct an actuarially based study of projected costs of incarceration.

(b) The study must:

(1) consider:

(A) the present and anticipated future costs of incarcerating the current inmate population;

(B) the effect of credit time;

(C) the effect of inmate mortality rates;

(D) the projected increase in costs of incarceration; and

(E) any other factor determined to be relevant by the department or the third party contractor; and

(2) provide an analysis of the projected costs of incarceration for each subsequent calendar year after the year the study is conducted until each inmate in the current inmate population is no longer serving the executed sentence for which the inmate is incarcerated in the department.

(c) Before July 1 of each year, the department shall provide the legislative council with the results of the study. The department shall provide the results in an electronic format under IC 5-14-6.

Sec. 7. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 11-12-2-3, AS AMENDED BY P.L.224-2003, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A community corrections advisory board shall:

(1) formulate:

(A) the community corrections plan and the application for financial aid required by section 4 of this chapter; and

(B) the forensic diversion program plan under ~~IC 11-12-3.5-2~~ IC 11-12-3.7;

(2) observe and coordinate community corrections programs in the county;

(3) make an annual report to the county fiscal body, county

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executive, or, in a county having a consolidated city, the city-county council, containing an evaluation of the effectiveness of programs receiving financial aid under this chapter and recommendations for improvement, modification, or discontinuance of these programs;

(4) ensure that programs receiving financial aid under this chapter comply with the standards adopted by the department under section 5 of this chapter; and

(5) recommend to the county executive or, in a county having a consolidated city, to the city-county council, the approval or disapproval of contracts with units of local government or nongovernmental agencies that desire to participate in the community corrections plan.

Before recommending approval of a contract, the advisory board must determine that a program is capable of meeting the standards adopted by the department under section 5 of this chapter.

(b) A community corrections advisory board shall do the following:

(1) Adopt bylaws for the conduct of its own business.

(2) Hold a regular meeting at least one (1) time every three (3) months and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established at the first meeting of each year.

(3) Comply with the public meeting and notice requirements under IC 5-14-1.5.

(c) A community corrections advisory board may contain an office as designated by the county executive or, in a county having a consolidated city, by the city-county council.

(d) Notwithstanding subsection (a)(4), the standards applied to a court alcohol and drug program or a drug court that provides services to a forensic diversion program under IC 11-12-3.7 must be the standards established under IC 12-23-14 or IC 12-23-14.5.

SECTION 3. IC 11-12-3.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 3.7. Forensic Diversion Program

Sec. 1. As used in this chapter, "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 2. As used in this chapter, "advisory board" means a:

(1) community corrections advisory board, if there is one in

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the county; or

(2) forensic diversion program advisory board, if there is not a community corrections advisory board in the county.

Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

(1) Dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), unless the person received only minimal consideration as a result of the drug transaction.

(2) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 25-48-4-4), unless the person received only minimal consideration as a result of the drug transaction.

(3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless the person received only minimal consideration as a result of the drug transaction.

Sec. 4. As used in this chapter, "forensic diversion program" means a program designed to provide an adult;

(1) who has a mental illness or addictive disorder; and

(2) who has been charged with a crime that is not a violent offense;

an opportunity to receive community treatment and other services addressing mental health and addiction instead of or in addition to incarceration.

Sec. 5. As used in this chapter, "mental illness" means a psychiatric disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 6. As used in this chapter, "violent offense" means one (1) or more of the following offenses:

(1) Murder (IC 35-42-1-1).

(2) Attempted murder (IC 35-41-5-1).

(3) Voluntary manslaughter (IC 35-42-1-3).

(4) Involuntary manslaughter (IC 35-42-1-4).

(5) Reckless homicide (IC 35-42-1-5).

(6) Aggravated battery (IC 35-42-2-1.5).

(7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.

(8) Kidnapping (IC 35-42-3-2).

(9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a Class A felony, Class B felony, or Class C felony.

(10) Sexual misconduct with a minor (IC 35-42-4-9) as a Class

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A felony or Class B felony.

(11) Incest (IC 35-46-1-3).

(12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).

(13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).

(14) Carjacking (IC 35-42-5-2).

(15) Assisting a criminal as a Class C felony (IC 35-44-3-2).

(16) Escape (IC 35-44-3-5) as a Class B felony or Class C felony.

(17) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).

(18) Causing death when operating a motor vehicle (IC 9-30-5-5).

(19) Criminal confinement (IC 35-42-3-3) as a Class B felony.

(20) Arson (IC 35-43-1-1) as a Class A or Class B felony.

(21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).

(22) Terroristic mischief (IC 35-47-12-3) as a Class B felony.

(23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).

(24) A violation of IC 35-47.5 (Controlled explosives) as a Class A or Class B felony.

(25) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.

(26) Any other crimes evidencing a propensity or history of violence.

Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:

(1) has a mental illness or addictive disorder; and

(2) has been charged with a crime that is not a violent crime; an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions instead of or in addition to incarceration.

(b) The forensic diversion plan may include any combination of the following program components:

(1) Pre-conviction diversion for adults with mental illness.

(2) Pre-conviction diversion for adults with addictive disorders.

(3) Post-conviction diversion for adults with mental illness.

(4) Post-conviction diversion for adults with addictive disorders.

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(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

- (1) a drug court established under IC 12-23-14.5;
- (2) a court alcohol and drug program certified under IC 12-23-14-13;
- (3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(a)(5); and
- (4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

- (1) operate the program;
- (2) contract with existing public or private agencies to operate one (1) or more components of the program; or
- (3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program:

- (1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or
- (2) for mental health must be provided by an entity that is:
 - (A) certified by the division of mental health and addiction under IC 12-21-2-3(a)(5);
 - (B) accredited by an accrediting body approved by the division of mental health and addiction; or
 - (C) licensed to provide mental health services under IC 25.

Sec. 8. (a) An individual may request treatment under this chapter or the court may order an evaluation of the individual to determine if the individual is an appropriate candidate for forensic diversion.

(b) A request for treatment or an order for an evaluation under this chapter tolls the running of the speedy trial time period until the court has made a determination of eligibility for the program under this section.

Sec. 9. (a) A court shall be provided with periodic progress reports on an individual who is ordered by the court to undergo treatment in a forensic diversion program.

(b) A participant may not be released from a forensic diversion

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1 program without a court order. The court must consider the
 2 recommendation of the forensic diversion program before ordering
 3 a participant's release.

4 Sec. 10. (a) A county that does not have a community
 5 corrections advisory board may form a forensic diversion advisory
 6 board.

7 (b) A forensic diversion advisory board formed under
 8 subsection (a) shall consist of the following:

9 (1) A judge exercising criminal jurisdiction in the county.

10 (2) The head of the county public defender office, if there is
 11 one in the county, or a criminal defense attorney who
 12 practices in the county if there is not a county public defender
 13 office in the county.

14 (3) The chief probation officer.

15 (4) The prosecuting attorney.

16 (5) The drug court judge or the designee of the drug court
 17 judge if there is a certified drug court in the county.

18 (6) The supervising judge of the court alcohol and drug
 19 services program or the designee of the supervising judge, if
 20 there is a certified court alcohol and drug services program in
 21 the county.

22 (7) An individual who is certified or licensed as a substance
 23 abuse professional.

24 (8) An individual who is certified or licensed as a mental
 25 health professional.

26 (9) An individual with expertise in substance abuse or mental
 27 health treatment.

28 Sec. 11. (a) A person is eligible to participate in a pre-conviction
 29 forensic diversion program only if the person meets the following
 30 criteria:

31 (1) The person has a mental illness or an addictive disorder.

32 (2) The person has been charged with an offense that is:

33 (A) not a violent offense; and

34 (B) a Class A, B, or C misdemeanor, or a Class D felony
 35 that may be reduced to a Class A misdemeanor in
 36 accordance with IC 35-50-2-7.

37 (3) The person does not have a conviction for a violent offense
 38 in the previous ten (10) years.

39 (b) Before an eligible person is permitted to participate in a
 40 pre-conviction forensic diversion program, the court shall advise
 41 the person of the following:

42 (1) Before the individual is permitted to participate in the

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program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.

(2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.

(3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.

(6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

(f) If, after considering the report of the forensic diversion program, the court determines that the person has:

(1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or

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(2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

(1) The person has a mental illness or an addictive disorder.

(2) The person has been convicted of an offense that is:

(A) not a violent offense; and

(B) not a drug dealing offense.

(3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(b) If the person has been convicted of an offense that may be suspended, the court shall suspend all or a portion of the person's sentence, place the person on probation for the suspended portion of the person's sentence, and require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person has been convicted of an offense that is nonsuspendible, the court shall order the execution of the nonsuspendible sentence and stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program. The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court shall revoke the person's probation and reimpose all or a portion of the person's suspended sentence.

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(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court shall lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department of correction. However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the court shall treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall waive execution of the nonsuspendible portion of the person's sentence.

Sec. 13. (a) As used in this section, "account" means the forensic diversion program account established as an account within the state general fund by subsection (b).

(b) The forensic diversion program account is established within the state general fund to administer and carry out the purposes of this chapter. The department shall administer the account.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest money in the account in the same manner as other public money may be invested.

(e) Money in the account at the end of the state fiscal year does not revert to the state general fund.

(f) The account consists of:

- (1) amounts appropriated by the general assembly; and
- (2) donations, grants, and money received from any other source.

(g) The department shall adopt guidelines governing the disbursement of funds to the advisory board to support the operation of the forensic diversion program.

(h) There is annually appropriated to the department from the account an amount sufficient to carry out the purposes of this chapter.

SECTION 4. IC 12-23-5-1, AS AMENDED BY P.L.224-2003, SECTION 125, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) In a criminal proceeding for

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a misdemeanor or infraction in which:

- (1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or
- (2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court may take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

~~(b) For purposes of IC 11-12-3.5, in a criminal proceeding in which:~~

- ~~(1) the use or abuse of alcohol drugs, or harmful substances is a contributing factor or a material element of the offense; or~~
- ~~(2) the defendant's mental illness other than substance abuse, is a contributing factor;~~

~~the court shall take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.~~

SECTION 5. IC 12-23-14.5-14, AS ADDED BY P.L.168-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) A person is eligible to participate in a drug court only if:

- (1) the person meets all criteria established by the drug court;
- (2) the judge approves the admission of the person to the drug court; and
- (3) the offense for which the person is referred to drug court is not any of the following:
 - (A) A forcible felony (as defined in IC 35-41-1-11).
 - ~~(B) A dealing offense under IC 35-48-4.~~
 - ~~(C)~~ (B) Any offense that a local drug court committee agrees to exclude from participation.

The local drug court committee referred to in subdivision (3)(C) must include the drug court judge, the local prosecuting attorney, and a local criminal defense attorney.

(b) If a person is eligible to participate in a drug court, a person may be referred to the drug court as a result of any of the following:

- (1) The procedure described in section 15 of this chapter.
- (2) As a term of probation.
- (3) In response to a violation of a condition of probation.

SECTION 6. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) When the defendant appears for sentencing, the court shall inform ~~him~~ the

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1 **defendant** of the verdict of the jury or the finding of the court. The
 2 court shall afford counsel for the defendant an opportunity to speak on
 3 behalf of the defendant. The defendant may also make a statement
 4 personally in ~~his~~ **the defendant's** own behalf and, before pronouncing
 5 sentence, the court shall ask ~~him~~ **the defendant** whether ~~he~~ **the**
 6 **defendant** wishes to make such a statement. Sentence shall then be
 7 pronounced, unless a sufficient cause is alleged or appears to the court
 8 for delay in sentencing.

9 **(b) A court that sentences a person to a term of imprisonment**
 10 **shall include the total costs of incarceration in the sentencing**
 11 **order. The court may not consider Class I credit under**
 12 **IC 35-50-6-3 in the calculation of the total costs of incarceration.**

13 SECTION 7. IC 35-40-5-5, AS ADDED BY P.L.139-1999,
 14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2004]: Sec. 5. A victim has the right to be heard at any
 16 proceeding involving ~~sentence or sentencing~~, a postconviction release
 17 decision, **or a pre-conviction release decision under a forensic**
 18 **diversion program.**

19 SECTION 8. IC 35-40-8-1, AS ADDED BY P.L.139-1999,
 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2004]: Sec. 1. Upon request of a victim, a criminal court shall
 22 notify the victim of any probation **or forensic diversion** revocation
 23 disposition proceeding or proceeding in which the court is asked to
 24 terminate the probation **or forensic diversion** of a person who is
 25 convicted of a crime against the victim.

26 SECTION 9. IC 35-40-8-2, AS ADDED BY P.L.139-1999,
 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2004]: Sec. 2. Upon request of a victim, a criminal court shall
 29 notify the victim of a modification of the terms of probation **or a**
 30 **forensic diversion program** of a person convicted of a crime against
 31 the victim only if:

- 32 (1) the modification will substantially affect the person's contact
- 33 with or safety of the victim; or
- 34 (2) the modification affects the person's restitution or confinement
- 35 status.

36 SECTION 10. IC 35-41-1-26.8 IS ADDED TO THE INDIANA
 37 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2004]: **Sec. 26.8. "Total costs of**
 39 **incarceration" means the average daily cost of incarcerating an**
 40 **offender, as described in IC 11-10-13, multiplied by the number of**
 41 **days the offender is sentenced to a term of imprisonment.**

42 SECTION 11. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,

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SECTION 126, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any
part of a sentence for a felony, except as provided in this section or in
section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the
court may suspend only that part of the sentence that is in excess of the
minimum sentence, unless the court has approved placement of the
offender in a forensic diversion program under ~~IC 11-12-3.5~~

IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the
person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven
(7) years have elapsed between the date the person was
discharged from probation, imprisonment, or parole, whichever
is later, for a prior unrelated felony conviction and the date the
person committed the Class C felony for which the person is
being sentenced.

(3) The crime committed was a Class D felony and less than three
(3) years have elapsed between the date the person was
discharged from probation, imprisonment, or parole, whichever
is later, for a prior unrelated felony conviction and the date the
person committed the Class D felony for which the person is
being sentenced. However, the court may suspend the minimum
sentence for the crime only if the court orders home detention
under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery
causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A
felony;

(H) child molesting (IC 35-42-4-3) as a Class A or Class B
felony;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
injury;

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- 1 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 2 or with a deadly weapon;
 3 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 4 weapon;
 5 (M) escape (IC 35-44-3-5) with a deadly weapon;
 6 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 7 (O) dealing in cocaine, a narcotic drug, or methamphetamine
 8 (IC 35-48-4-1) if the court finds the person possessed a firearm
 9 (as defined in IC 35-47-1-5) at the time of the offense, or the
 10 person delivered or intended to deliver to a person under
 11 eighteen (18) years of age at least three (3) years junior to the
 12 person and was on a school bus or within one thousand (1,000)
 13 feet of:
 14 (i) school property;
 15 (ii) a public park;
 16 (iii) a family housing complex; or
 17 (iv) a youth program center;
 18 (P) dealing in a schedule I, II, or III controlled substance
 19 (IC 35-48-4-2) if the court finds the person possessed a firearm
 20 (as defined in IC 35-47-1-5) at the time of the offense, or the
 21 person delivered or intended to deliver to a person under
 22 eighteen (18) years of age at least three (3) years junior to the
 23 person and was on a school bus or within one thousand (1,000)
 24 feet of:
 25 (i) school property;
 26 (ii) a public park;
 27 (iii) a family housing complex; or
 28 (iv) a youth program center;
 29 (Q) an offense under IC 9-30-5 (operating a vehicle while
 30 intoxicated) and the person who committed the offense has
 31 accumulated at least two (2) prior unrelated convictions under
 32 IC 9-30-5; or
 33 (R) aggravated battery (IC 35-42-2-1.5).
 34 (c) Except as provided in subsection (e), whenever the court
 35 suspends a sentence for a felony, it shall place the person on probation
 36 under IC 35-38-2 for a fixed period to end not later than the date that
 37 the maximum sentence that may be imposed for the felony will expire.
 38 (d) The minimum sentence for a person convicted of voluntary
 39 manslaughter may not be suspended unless the court finds at the
 40 sentencing hearing that the crime was not committed by means of a
 41 deadly weapon.
 42 (e) Whenever the court suspends that part of an offender's (as

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defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 12. IC 36-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The sheriff shall:

(1) arrest without process persons who commit an offense within ~~his~~ **the sheriff's** view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;

(2) suppress breaches of the peace, calling the power of the county to ~~his~~ **the sheriff's** aid if necessary;

(3) pursue and jail felons;

(4) execute all process directed to ~~him~~ **the sheriff** by legal authority;

(5) serve all process directed to ~~him~~ **the sheriff** from a court or the county executive;

(6) attend and preserve order in all courts of the county;

(7) take care of the county jail and the prisoners there; ~~and~~

(8) take photographs, fingerprints, and other identification data as ~~he~~ **the sheriff** shall prescribe of persons taken into custody for felonies or misdemeanors; ~~and~~

(9) on or before January 31 and June 30 of each year, provide to the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.

(b) A person who:

(1) refuses to be photographed;

(2) refuses to be fingerprinted;

(3) withholds information; or

(4) gives false information;

as prescribed in subsection (a)(8), commits a Class C misdemeanor.

SECTION 13. [EFFECTIVE JULY 1, 2004] **(a) As used in this SECTION, "committee" refers to the forensic diversion study committee established by subsection (c).**

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(b) As used in this SECTION, "forensic diversion program" means the program established under IC 11-12-3.7, as added by this act, and any similar program that treats persons charged with or convicted of offenses eligible for forensic diversion who have a mental illness or addictive disorder.

(c) There is established the forensic diversion study committee. The committee shall:

- (1) evaluate the effectiveness and appropriateness of forensic diversion programs within Indiana and in other jurisdictions; and
- (2) review the adequacy of funding provided for forensic diversion programs.

(d) The committee consists of fifteen (15) members appointed as follows:

- (1) Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) The chief justice of the supreme court or the chief justice's designee.
- (4) The commissioner of the department of correction or the commissioner's designee.
- (5) The director of the Indiana criminal justice institute or the director's designee.
- (6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.
- (7) The executive director of the public defender of Indiana council or the executive director's designee.
- (8) The secretary of family and social services, or the secretary's designee.
- (9) One (1) person with experience in administering community corrections programs, appointed by the governor.
- (10) One (1) person with experience in administering probation programs, appointed by the governor.
- (11) One (1) person with experience in treating mental illness, appointed by the governor.
- (12) One (1) person with experience in treating addictive disorders, appointed by the governor.
- (13) Two (2) judges who exercise criminal jurisdiction, who may not be affiliated with the same political party, appointed

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by the governor.

(14) One (1) law enforcement officer with experience in programs that provide alternatives to incarceration for persons with mental illness or addictive disorders.

(e) The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman of the legislative council may remove the chair of the committee and appoint another chair.

(f) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(g) A legislative member of the committee may be removed at any time by the authority who appointed the legislative member.

(h) If a vacancy exists on the committee, the authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(i) The committee shall submit a final report of its study to the legislative council before November 1, 2007.

(j) The Indiana criminal justice institute shall provide staff support to the committee.

(k) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(l) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any measure, including the final report.

(m) The committee:

(1) shall meet at the call of the chair; and

(2) may meet at any time before October 15, 2007.

(n) Except as otherwise specifically provided by this act, the committee shall operate under the rules of the legislative council. All funds necessary to carry out this SECTION shall be paid from appropriations to the legislative council and legislative services agency.

(o) This SECTION expires December 31, 2007.

SECTION 14. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1, 2004].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1437, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 11-10-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 13. Costs of Incarceration

Sec. 1. The department shall develop a methodology for determining the average daily cost of incarcerating an offender.

Sec. 2. The department shall determine the average daily cost of incarcerating an offender in:

- (1) the department; and**
- (2) each county jail.**

Sec. 3. The department shall provide each court with jurisdiction over felony and misdemeanor cases with a report enumerating the average daily costs of incarcerating an offender.

Sec. 4. (a) The department shall update the report described in section 3 of this chapter twice each calendar year. However, if the average daily cost of incarcerating an offender deviates less than one percent (1%) from the previous cost determination, the department is not required to update the report.

(b) The department shall update the report described in section 3 of this chapter, if necessary, after receiving the semiannual incarceration cost analysis from each county sheriff under IC 36-2-13-5.

Sec. 5. The department may use the semiannual incarceration cost analysis of a county sheriff under IC 36-2-13-5 as the daily cost of incarcerating an offender in that county jail.

Sec. 6. (a) The department shall annually conduct or contract with a third party to annually conduct an actuarially based study of projected costs of incarceration.

(b) The study must:

- (1) consider:**
 - (A) the present and anticipated future costs of incarcerating the current inmate population;**
 - (B) the effect of credit time;**
 - (C) the effect of inmate mortality rates;**
 - (D) the projected increase in costs of incarceration; and**
 - (E) any other factor determined to be relevant by the**

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department or the third party contractor; and

(2) provide an analysis of the projected costs of incarceration for each subsequent calendar year after the year the study is conducted until each inmate in the current inmate population is no longer serving the executed sentence for which the inmate is incarcerated in the department.

(c) Before July 1 of each year, the department shall provide the legislative council with the results of the study. The department shall provide the results in an electronic format under IC 5-14-6.

Sec. 7. The department may adopt rules under IC 4-22-2 to implement this chapter."

Page 2, line 5, after "IC 11-12-3.7." insert "**However, a county or a combination of counties is not required to establish and operate a community corrections advisory board if a controlled substance rehabilitation program is operated by the judge of a drug court as provided in IC 11-12-3.7-4.**".

Page 3, line 16, after ";" insert "**or**".

Page 3, line 20, delete ";" and insert ".".

Page 3, delete lines 21 through 31.

Page 4, line 19, after "IC 11-12-1-2" insert "**or the judge of a drug court who is authorized to operate a controlled substance rehabilitation program under section 4 of this chapter**".

Page 4, line 37, after "addiction" delete ";" and insert "**or the Indiana judicial center;**".

Page 4, line 39, after "board" insert "**, the judge of a drug court certified under IC 12-23-14.5,**".

Page 4, between lines 39 and 40, begin a new line blocked left and insert "**The Indiana judicial center may adopt rules to implement this section.**".

Page 5, line 26, after "to" insert ":

(1)".

Page 5, line 26, after "county" insert "**; or**

(2) the Indiana judicial center drug fund if a drug court operates a controlled substance rehabilitation program;".

Page 5, line 26, beginning with "that", begin a new line blocked left.

Page 7, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 12. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) When the defendant appears for sentencing, the court shall inform ~~him~~ **the defendant** of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement

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personally in ~~his~~ **the defendant's** own behalf and, before pronouncing sentence, the court shall ask ~~him~~ **the defendant** whether ~~he~~ **the defendant** wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration."

Page 10, between lines 17 and 18, begin a new paragraph and insert:
 "SECTION 14. IC 35-41-1-26.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26.8. "Total costs of incarceration" means the average daily cost of incarcerating an offender, as described in IC 11-10-13, multiplied by the number of days the offender is sentenced to a term of imprisonment."**

Page 13, between lines 11 and 12, begin a new paragraph and insert:
 "SECTION 17. IC 36-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The sheriff shall:

- (1) arrest without process persons who commit an offense within ~~his~~ **the sheriff's** view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (2) suppress breaches of the peace, calling the power of the county to ~~his~~ **the sheriff's** aid if necessary;
- (3) pursue and jail felons;
- (4) execute all process directed to ~~him~~ **the sheriff** by legal authority;
- (5) serve all process directed to ~~him~~ **the sheriff** from a court or the county executive;
- (6) attend and preserve order in all courts of the county;
- (7) take care of the county jail and the prisoners there; ~~and~~
- (8) take photographs, fingerprints, and other identification data as ~~he~~ **the sheriff** shall prescribe of persons taken into custody for felonies or misdemeanors; **and**
- (9) on or before January 31 and June 30 of each year, provide to the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.**

(b) A person who:

- (1) refuses to be photographed;

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(2) refuses to be fingerprinted;
(3) withholds information; or
(4) gives false information;
as prescribed in subsection (a)(8), commits a Class C misdemeanor."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1437 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1437 be amended to read as follows:

Page 3, line 13, delete "the judge of".

Page 3, line 13, after "a" insert "**certified**".

Page 3, line 13, after "court" insert "**or a certified court alcohol and drug services program**".

Page 5, line 16, delete "community corrections advisory board established" and insert "**county shall develop a controlled substance rehabilitation program to do the following:**".

Page 5, delete lines 17 through 21.

Page 5, run in lines 16 through 22.

Page 5, line 26, delete "crime" and insert "**forcible felony**".

Page 5, line 27, delete "involving serious bodily injury".

Page 5, line 36, after "4." insert "(a)".

Page 5, line 36, delete "program:" and insert "**program may be operated by a:**".

Page 5, delete lines 37 through 41 and begin a new line block indented and insert:

"(1) community corrections advisory board;

(2) drug court certified by the Indiana judicial center under IC 12-23-14.5; or

(3) a court alcohol and drug services program certified by the Indiana judicial center under IC 12-23-14.

(b) A controlled substance rehabilitation program must be certified by the division of mental health and addiction if the controlled substance rehabilitation program is operated by a community corrections advisory board."

Page 6, line 3, delete "services:" and insert "**services directly or indirectly:**".

Page 6, line 30, delete "to:" and insert "**to the entity that operates the controlled substance rehabilitation program.**".

Page 6, delete lines 31 through 34.

(Reference is to HB 1437 as printed January 30, 2004.)

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SENATE MOTION

Madam President: I move that Senator Meeks R be removed as sponsor of Engrossed House Bill 1437 and that Senator Long be substituted therefor.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1437, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 4.

Page 2, delete lines 35 through 42.

Page 3, delete lines 1 through 15, begin a new paragraph and insert:

"SECTION 4. IC 11-12-2-3, AS AMENDED BY P.L.224-2003, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A community corrections advisory board shall:

(1) formulate:

(A) the community corrections plan and the application for financial aid required by section 4 of this chapter; and

(B) the forensic diversion program plan under ~~IC 11-12-3.5-2~~
IC 11-12-3.7;

(2) observe and coordinate community corrections programs in the county;

(3) make an annual report to the county fiscal body, county executive, or, in a county having a consolidated city, the city-county council, containing an evaluation of the effectiveness of programs receiving financial aid under this chapter and recommendations for improvement, modification, or discontinuance of these programs;

(4) ensure that programs receiving financial aid under this chapter comply with the standards adopted by the department under section 5 of this chapter; and

(5) recommend to the county executive or, in a county having a consolidated city, to the city-county council, the approval or disapproval of contracts with units of local government or nongovernmental agencies that desire to participate in the community corrections plan.

Before recommending approval of a contract, the advisory board must determine that a program is capable of meeting the standards adopted by the department under section 5 of this chapter.

(b) A community corrections advisory board shall do the following:

(1) Adopt bylaws for the conduct of its own business.

(2) Hold a regular meeting at least one (1) time every three (3) months and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established at the first meeting of each year.

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(3) Comply with the public meeting and notice requirements under IC 5-14-1.5.

(c) A community corrections advisory board may contain an office as designated by the county executive or, in a county having a consolidated city, by the city-county council."

Page 4, delete lines 9 through 42, begin a new paragraph and insert:
"Chapter 3.7. Forensic Diversion Program

Sec. 1. As used in this chapter, "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 2. As used in this chapter, "advisory board" means a:

- (1) community corrections advisory board, if there is one in the county; or**
- (2) forensic diversion program advisory board, if there is not a community corrections advisory board in the county.**

Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

- (1) Dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), unless the person received only minimal consideration as a result of the drug transaction.**
- (2) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 25-48-4-4), unless the person received only minimal consideration as a result of the drug transaction.**
- (3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless the person received only minimal consideration as a result of the drug transaction.**

Sec. 4. As used in this chapter, "forensic diversion program" means a program designed to provide an adult;

- (1) who has a mental illness or addictive disorder; and**
- (2) who has been charged with a crime that is not a violent offense;**

an opportunity to receive community treatment and other services addressing mental health and addiction.

Sec. 5. As used in this chapter, "mental illness" means a psychiatric disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 6. As used in this chapter, "violent offense" means one (1)

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or more of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a Class A felony, Class B felony, or Class C felony.
- (10) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A felony or Class B felony.
- (11) Incest (IC 35-46-1-3).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
- (13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).
- (14) Carjacking (IC 35-42-5-2).
- (15) Assisting a criminal as a Class C felony (IC 35-44-3-2).
- (16) Escape (IC 35-44-3-5) as a Class B felony or Class C felony.
- (17) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).
- (18) Causing death when operating a motor vehicle (IC 9-30-5-5).
- (19) Criminal confinement (IC 35-42-3-3) as a Class B felony.
- (20) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.
- (21) Any other crime evidencing a propensity or history of violence.

Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:

- (1) has a mental illness or addictive disorder; and
- (2) has been charged with a crime that is not a violent crime; an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions.

(b) The forensic diversion plan may include any combination of the following program components:

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- (1) Pre-conviction diversion for adults with mental illness.
- (2) Pre-conviction diversion for adults with addictive disorders.
- (3) Post-conviction diversion for adults with mental illness.
- (4) Post-conviction diversion for adults with addictive disorders.

(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

- (1) a drug court established under IC 12-23-14.5;
- (2) a court alcohol and drug program certified under IC 12-23-14-13; and
- (3) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

- (1) operate the program;
- (2) contract with existing public or private agencies to operate one (1) or more components of the program; or
- (3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program must be provided by an entity certified by the division of mental health and addiction.

Sec. 8. (a) An individual may request treatment under this chapter or the court may order an evaluation of the individual to determine if the individual is an appropriate candidate for forensic diversion.

(b) A request for treatment under this chapter tolls the running of the speedy trial time period until the court has made a determination of eligibility for the program under this section.

Sec. 9. (a) A court shall be provided with periodic progress reports on an individual who is ordered by the court to undergo treatment in a forensic diversion program.

(b) A participant may not be released from a forensic diversion program without a court order. The court must consider the recommendation of the forensic diversion program before ordering a participant's release.

Sec. 10. (a) A county that does not have a community corrections advisory board may form a forensic diversion advisory board.

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(b) A forensic diversion advisory board formed under subsection (a) shall consist of the following:

- (1) A judge exercising criminal jurisdiction in the county.
- (2) The head of the county public defender office, if there is one in the county, or a criminal defense attorney who practices in the county if there is not a county public defender office in the county.
- (3) The chief probation officer.
- (4) The prosecuting attorney.
- (5) The drug court judge or the designee of the drug court judge if there is a certified drug court in the county.
- (6) The supervising judge of the court alcohol and drug services program or the designee of the supervising judge, if there is a certified court alcohol and drug services program in the county.
- (7) An individual with expertise in substance abuse treatment.
- (8) An individual with expertise in mental health treatment.

Sec. 11. (a) A person is eligible to participate in a pre-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness or an addictive disorder.
- (2) The person has been charged with an offense that is:
 - (A) not a violent offense; and
 - (B) a Class A, B, or C misdemeanor, or a Class D felony that may be reduced to a Class A misdemeanor in accordance with IC 35-50-2-7.
- (3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(b) Before an eligible person is permitted to participate in a pre-conviction forensic diversion program, the court shall advise the person of the following:

- (1) Before the individual is permitted to participate in the program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.
- (2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.
- (3) If the individual participates in the program, the

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individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction.

(6) The court shall determine, based upon a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

- (1) two (2) years, if the person has been charged with a misdemeanor; or
- (2) three (3) years, if the person has been charged with a felony.

(e) If, based on the report of the forensic diversion program, the court determines that the person has:

- (1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or
- (2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction.

Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness or an addictive disorder.
- (2) The person has been convicted of an offense that is:
 - (A) not a violent offense; and
 - (B) not a drug dealing offense.
- (3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(b) If the person has been convicted of an offense that may be suspended, the court shall suspend all or a portion of the person's

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sentence, place the person on probation for the suspended portion of the person's sentence, and require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person has been convicted of an offense that is nonsuspendible, the court shall order the execution of all or part of the nonsuspendible sentence and stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program. The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

- (1) two (2) years, if the person has been charged with a misdemeanor; or
- (2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, based on the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court shall revoke the person's probation and reimpose all or a portion of the person's suspended sentence.

(f) If, based on the recommendation of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court shall lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department of correction. However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the court shall treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, based on the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall

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waive execution of the nonsuspendible portion of the person's sentence.

Sec. 13. (a) As used in this section, "account" means the forensic diversion program account established as an account within the state general fund by subsection (b).

(b) The forensic diversion program account is established within the state general fund to administer and carry out the purposes of this chapter. The department shall administer the account.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest money in the account in the same manner as other public money may be invested.

(e) Money in the account at the end of the state fiscal year does not revert to the state general fund.

(f) The account consists of:

- (1) amounts appropriated by the general assembly; and**
- (2) donations, grants, and money received from any other source.**

(g) The department shall adopt guidelines governing the disbursement of funds to the advisory board to support the operation of the forensic diversion program.

(h) There is annually appropriated to the department from the account an amount sufficient to carry out the purposes of this chapter."

Delete pages 5 and 6.

Page 7, line 3, strike "(a)".

Page 7, strike lines 13 through 21.

Page 7, delete lines 22 through 42.

Page 8, delete lines 1 through 32, begin a new paragraph and insert:

"SECTION 12. IC 12-23-14.5-14, AS ADDED BY P.L.168-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) A person is eligible to participate in a drug court only if:

- (1) the person meets all criteria established by the drug court;**
- (2) the judge approves the admission of the person to the drug court; and**
- (3) the offense for which the person is referred to drug court is not any of the following:**

(A) A forcible felony (as defined in IC 35-41-1-11).

~~(B) A dealing offense under IC 35-48-4.~~

~~(C)~~ (B) Any offense that a local drug court committee agrees to exclude from participation.

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The local drug court committee referred to in subdivision (3)(C) must include the drug court judge, the local prosecuting attorney, and a local criminal defense attorney.

(b) If a person is eligible to participate in a drug court, a person may be referred to the drug court as a result of any of the following:

- (1) The procedure described in section 15 of this chapter.
- (2) As a term of probation.
- (3) In response to a violation of a condition of probation."

Page 9, delete lines 6 through 42.

Delete page 10.

Page 11, delete lines 1 through 37.

Page 12, delete lines 2 through 26.

Page 12, line 35, strike "IC 11-12-3.5" and insert "IC 11-12-3.7:".

Page 12, line 35, delete "or in a".

Page 12, delete line 36.

Page 15, delete lines 25 through 26, begin a new paragraph and insert:

"SECTION 14. [EFFECTIVE JULY 1, 2004] (a) **As used in this SECTION, "committee" refers to the forensic diversion study committee established by subsection (c).**

(b) **As used in this SECTION, "forensic diversion program" means the program established under IC 11-12-3.7, as added by this act, and any similar program that treats persons charged with or convicted of offenses eligible for forensic diversion who have a mental illness or addictive disorder.**

(c) **There is established the forensic diversion study committee. The committee shall:**

- (1) **evaluate the effectiveness and appropriateness of forensic diversion programs within Indiana and in other jurisdictions; and**
- (2) **review the adequacy of funding provided for forensic diversion programs.**

(d) **The committee consists of fifteen (15) members appointed as follows:**

- (1) **Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.**
- (2) **Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.**
- (3) **The chief justice of the supreme court or the chief justice's designee.**

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(4) The commissioner of the department of correction or the commissioner's designee.

(5) The director of the Indiana criminal justice institute or the director's designee.

(6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(7) The executive director of the public defender of Indiana council or the executive director's designee.

(8) One (1) person with experience in administering community corrections programs, appointed by the governor.

(9) One (1) person with experience in administering probation programs, appointed by the governor.

(10) One (1) person with experience in treating mental illness or addictive disorders, appointed by the governor.

(11) Two (2) judges who exercise criminal jurisdiction, who may not be affiliated with the same political party, appointed by the governor.

(12) The director of the division of mental health and addiction or the director's designee.

(e) The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman of the legislative council may remove the chair of the committee and appoint another chair.

(f) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(g) A legislative member of the committee may be removed at any time by the authority who appointed the legislative member.

(h) If a vacancy exists on the committee, the authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(i) The committee shall submit a final report of its study to the legislative council before November 1, 2007.

(j) The Indiana criminal justice institute shall provide staff support to the committee.

(k) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(l) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take

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action on any measure, including the final report.

(m) The committee:

(1) shall meet at the call of the chair; and

(2) may meet at any time before October 15, 2007.

(n) Except as otherwise specifically provided by this act, the committee shall operate under the rules of the legislative council. All funds necessary to carry out this SECTION shall be paid from appropriations to the legislative council and legislative services agency.

(o) This SECTION expires December 31, 2007.

SECTION 15. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1, 2004]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1437 as reprinted February 5, 2004.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1437 be amended to read as follows:

Page 3, between lines 27 and 28, begin a new paragraph and insert:

"(d) Notwithstanding subsection (a)(4), the standards applied to a court alcohol and drug program or a drug court that provides services to a forensic diversion program under IC 11-12-3.7 must be the standards established under IC 12-23-14 or IC 12-23-14.5."

Page 3, delete lines 28 through 42.

Page 4, delete lines 1 through 17.

Page 5, line 8, delete "." and insert **"instead of or in addition to incarceration."**

Page 6, line 1, after "(20)" insert **"Arson (IC 35-43-1-1) as a Class A or Class B felony."**

(21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).

(22) Terroristic mischief (IC 35-47-12-3) as a Class B felony.

(23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).

(24) A violation of IC 35-47.5 (Controlled explosives) as a Class A or Class B felony.

(25)".

Page 6, line 4, delete "(21)" and insert "(26)".

Page 6, line 4, delete "crime" and insert **"crimes"**.

Page 6, line 12, delete "." and insert **"instead of or in addition to incarceration."**

Page 6, line 26, delete "and".

Page 6, line 27, after "(3)" insert:

"treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(a)(5); and (4)".

Page 6, line 38, delete "program must be provided by an entity certified by the division of" and insert **"program:**

(1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or

(2) for mental health must be provided by an entity that is:

(A) certified by the division of mental health and addiction under IC 12-21-2-3(a)(5);

(B) accredited by an accrediting body approved by the division of mental health and addiction; or

(C) licensed to provide mental health services under IC 25."

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Page 6, delete line 39.

Page 7, line 2, after "treatment" insert **"or an order for an evaluation"**.

Page 7, line 30, delete "with expertise in substance abuse treatment." and insert **"who is certified or licensed as a substance abuse professional."**

Page 7, line 31, delete "with expertise in mental health treatment." and insert **"who is certified or licensed as a mental health professional."**

(9) An individual with expertise in substance abuse or mental health treatment."

Page 8, line 23, after "conviction" insert **"and dismiss the charges"**.

Page 8, line 24, delete "based upon" and insert **"after considering"**.

Page 8, line 31, after "(d)" insert **"Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26."**

(e)".

Page 8, line 38, delete "(e) If, based on" and insert **"(f) If, after considering"**.

Page 9, line 3, after "conviction" insert **"and dismiss the charges"**.

Page 9, line 20, delete "all or part of".

Page 9, line 36, delete "based on" and insert **"after considering"**.

Page 9, line 42, delete "based on the recommendation" and insert **"after considering the report"**.

Page 10, line 12, delete "based on" and insert **"after considering"**.

Page 12, between lines 11 and 12, begin a new paragraph and insert:
"SECTION 9. IC 35-40-5-5, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. A victim has the right to be heard at any proceeding involving ~~sentence or sentencing~~, a postconviction release decision, or a pre-conviction release decision under a forensic diversion program."

SECTION 10. IC 35-40-8-1, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. Upon request of a victim, a criminal court shall notify the victim of any probation **or forensic diversion** revocation disposition proceeding or proceeding in which the court is asked to terminate the probation **or forensic diversion** of a person who is convicted of a crime against the victim.

SECTION 11. IC 35-40-8-2, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 2. Upon request of a victim, a criminal court shall notify the victim of a modification of the terms of probation **or a forensic diversion program** of a person convicted of a crime against the victim only if:

- (1) the modification will substantially affect the person's contact with or safety of the victim; or
- (2) the modification affects the person's restitution or confinement status."

Page 16, line 7, after "(8)" insert "**The secretary of family and social services, or the secretary's designee.**

(9)".

Page 16, line 9, delete "(9)" and insert "**(10)".**

Page 16, line 11, delete "(10)" and insert "**(11)".**

Page 16, line 11, delete "illness" and insert "**illness,**".

Page 16, line 12, delete "or addictive disorders,"

Page 16, line 13, delete "(11)" and insert "**(12) One (1) person with experience in treating addictive disorders, appointed by the governor.**

(13)".

Page 16, delete line 16, begin a new line block indented and insert:

"(14) One (1) law enforcement officer with experience in programs that provide alternatives to incarceration for persons with mental illness or addictive disorders."

Page 16, delete line 17.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1437 as printed February 20, 2004.)

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